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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/882,221	06/15/2001	Peter Michael Gits	2705-187	9267
20575	7590	07/30/2004	EXAMINER	
MARGER JOHNSON & MCCOLLOM PC 1030 SW MORRISON STREET PORTLAND, OR 97205			DUONG, THOMAS	
			ART UNIT	PAPER NUMBER
			2143	

DATE MAILED: 07/30/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 09/882,221	Applicant(s) GITS ET AL.	
	Examiner Thomas Duong	Art Unit 2143	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 15 June 2001.
 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 11-19, 25-31 and 36-41 is/are pending in the application.
 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
 5) ☐ Claim(s) _____ is/are allowed.
 6) ☒ Claim(s) 11-19, 25-31 and 36-41 is/are rejected.
 7) ☐ Claim(s) _____ is/are objected to.
 8) ☒ Claim(s) 1-10, 20-24 and 32-35 are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
 10) ☒ The drawing(s) filed on 15 June 2001 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 a) ☐ All b) ☐ Some * c) ☐ None of:
 1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|--|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input checked="" type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>1-5</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Election/Restrictions

1. Applicant is advised that the response to this requirement to be complete must include an election of the invention to be examined even though the requirement be traversed (37 CFR 1.143).

2. Restriction to one of the following inventions is required under 35 U.S.C. 121:

Group 1: Claims 1-10, 20-24 and 32-35 are drawn to "distributed data processing: processing agent", classified in class 709, subclass 202.

Group 2: Claims 11-19, 25-31 and 36-41 are drawn to "computer network managing: computer network monitoring", classified in class 709, subclass 224.

3. The inventions are distinct, each from the other because of the following reasons:

- Inventions of *Group 1* are related as combination and subcombinations of *Group 2*. Inventions in this relationship are distinct if it can be shown that (1) the combination as claimed does not require the particulars of the subcombinations as claimed for patentability, and (2) that the subcombinations has utility by itself or in other combinations (MPEP § 806.05(c)). In the instant case, the combination (*Group 1*) as claimed does not require the particulars of the subcombinations (*Group 2*) as claimed because to both subcombinations and combination are presented and assumed to be patentable. The omission of specific details of the subcombinations as recited in claims 11-19, 25-31 and 36-41, in the combination as recited in claims 1-10, 20-24 and 32-35 is evidence that

the patentability of the combination does not rely on the details of the specific subcombinations. The subcombinations of *Group 2* have separate utility such as "*computer network managing: computer network monitoring*".

- Inventions of *Group 2* are related as subcombinations disclosed as usable together in a single combination. The subcombinations are distinct from each other if they are shown to be separately usable. In the instant case, inventions of *Group 2* have separate utility such as "*computer network managing: computer network monitoring*". See MPEP § 806.05(d).

Because these inventions are distinct for the reasons given above and the search required a separate status in the art as shown by their different classification, the search required for *Group 1* is not required for the other *Group 2*, restriction for examination purposes as indicated is proper.

4. Applicant's election without traverse of claims 11-19, 25-31 and 36-41 through telephone conversation is acknowledged.
5. Claims 1-10, 20-24 and 32-35 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected inventions, there being no allowable generic or linking claim. Election was made **without** traverse through telephone conversation. In response to this office action, cancellation of nonelected claims is required from the Applicants.

Specification

6. Applicant is reminded of the proper language and format for an abstract of the disclosure.

Art Unit: 2143

The abstract should be in narrative form and generally limited to a single paragraph on a separate sheet within the range of 50 to 150 words. It is important that the abstract not exceed 150 words in length since the space provided for the abstract on the computer tape used by the printer is limited. The form and legal phraseology often used in patent claims, such as "means" and "said," should be avoided. The abstract should describe the disclosure sufficiently to assist readers in deciding whether there is a need for consulting the full patent text for details.

The language should be clear and concise and should not repeat information given in the title. It should avoid using phrases which can be implied, such as, "The disclosure concerns," "The disclosure defined by this invention," "The disclosure describes," etc.

Please make the appropriate correction by elaborating and clarifying the current abstract.

Claim Rejections - 35 USC § 102

7. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

8. Claims 11-19, 25-31 and 36-41 are rejected under 35 U.S.C. 102(e) as being anticipated by Shaughnessy et al. (US005928325A).
9. With regard to claims 11, 14, 25, 31 and 36, Shaughnessy reference discloses,

- *a lurker (central agent 15) designed to visit an environment within the Scalable Infrastructure system (communication networks 30-60); and* (Shaughnessy, col.3, lines 23-29, lines 47-53; col.4, lines 59-65; module 15, fig.1; modules 220-230, fig.2; Shaughnessy teaches of a system containing a central agent (lurker) that is connected to various communication networks and is capable of receiving incoming message, identifying the intended recipient, polling the user devices associated with the recipient for current availability and servicing the available user devices accordingly)
 - *an inquirer designed to inquire (poll) as to the availability of a device in the environment.* (Shaughnessy, col.3, lines 29-32; col.5, lines 10-16; module 240, fig.2; Shaughnessy teaches of a system containing a central agent (lurker) that is connected to various communication networks and is capable of receiving incoming message, identifying the intended recipient, polling the user devices associated with the recipient for current availability and servicing the available user devices accordingly)
10. With regard to claims 12-13, 15-16, 26-27 and 37-38, Shaughnessy reference discloses the invention substantially as claimed,
- See *claims 11, 14, 25, 31 and 36* rejection as detailed above.
- Furthermore, Shaughnessy reference discloses,
- *the network lurking agent further comprising a sender designed to send a message when the inquiry is refused.* (Shaughnessy, col.3, lines 29-32; col.5, lines 17-40; Shaughnessy teaches of a system containing a central agent (lurker) that is connected to various communication networks and is capable of receiving incoming message, identifying the intended recipient, polling the user devices

associated with the recipient for current availability and servicing the available user devices accordingly)

- *the network lurking agent further comprising a receiver designed to receive a message. (Shaughnessy, col.3, lines 29-32; Shaughnessy teaches of a system containing a central agent (lurker) that is connected to various communication networks and is capable of receiving incoming message, identifying the intended recipient, polling the user devices associated with the recipient for current availability and servicing the available user devices accordingly)*

11. With regard to claims 17-19, 28-30 and 39-41, Shaughnessy reference discloses the invention substantially as claimed,

See *claims 11, 14, 27 and 38* rejection as detailed above.

Furthermore, Shaughnessy reference discloses,

- *wherein the network receiving agent is designed to store an environment setting in a Space in the Scalable Infrastructure system. (Shaughnessy, col.3, lines 29-32; col.5, lines 17-40)*
- *wherein the network receiving agent and the network lurking agent are designed to open devices as a result of the inquiry, the devices enabling communication. (Shaughnessy, col.3, lines 29-32; col.5, lines 17-40)*

Conclusion

12. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure:

- Yoshida et al. (US005638514)
- Robins et al. (US005049873)

- Fujii (US005299207)
- Burke (US004972367)


13. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Thomas Duong whose telephone number is 703/305-1886. The examiner can normally be reached on M-F 7:30AM - 4:00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David A Wiley can be reached on 703/308-5221. The fax phone numbers for the organization where this application or proceeding is assigned are 703/872-9306 for regular communications and 703/872-9306 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703/305-3900.

Thomas Duong (AU2143)

July 14, 2004


DAVID WILEY
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 2100